commissioners was given power to appoint and discharge the probation officer of the county court. The constitution provided that no person composing one of the three departments should exercise any power properly belonging to either of the others. *Held*, that the statute is unconstitutional, since it is a delegation of a judicial power to an administrative board. *Witter* v. *County Commissioners of Cook County*, 45 Chic. Leg. N. 194 (Ill., Sup. Ct., Dec., 1912). See NOTES, p. 744.

CONSTITUTIONAL LAW — TRIAL BY JURY — VALIDITY OF STATUTE ALLOWING CHANGE OF VENUE UPON APPLICATION BY PROSECUTOR. — A state constitution provided that the right of trial by jury should remain. A statute allowed circuit courts, upon good cause shown, to change the venue in any causes pending before them. On the application of the prosecution, a circuit court made an order changing the venue in a criminal case. The accused thereupon brought mandamus to compel a vacation of the order. *Held*, that the writ will issue. *Glinnan* v. *Phelan*, 140 N. W. 87 (Mich.).

Two of the four judges composing the majority reached their conclusions on the ground that the statute was unconstitutional, though a majority of the court thought otherwise. The question turns on what the right of the accused was at common law, for this the constitution guarantees him. At common law, upon a writ of *certiorari*, there was a discretionary power to change the venue at the defendant's request, if he showed that a fair trial was impossible in the district where the crime occurred. *King* v. *Hunt*, 3 B. & Ald. 444. See *People* v. *Vermilyea*, 7 Cow. (N. Y.) 108. By the better view changes were also granted upon the same ground on the prosecutor's application. *Regina* v. *Barrett*, Ir. R. 4 C. L. 285. See *Barry* v. *Truax*, 13 N. D. 131, 141, 99 N. W. 769, 772. But see *People* v. *Powell*, 87 Cal. 348, 25 Pac. 481. The common-law right guaranteed by the state constitution was therefore only a conditional right to be tried in the county where the crime was committed. Hence the statute in the principal case is not unconstitutional. *People* v. *Peterson*, 93 Mich. 27, 52 N. W. 1039; *Barry* v. *Truax*, *supra*. This reasoning would seem to apply even where the constitution expressly provides for a trial in the county or district where the crime occurs, for this is the broad common-law rule, into which the common-law exception should be read. The slight weight of authority is, however, opposed to this view. *Wheeler* v. *State*, 24 Wis. 52; *In re Nelson*, 19 S. D. 214, 102 N. W. 885. *Contra*, *State* v. *Miller*, 15 Minn. 344; *Hewitt* v. *State*, 43 Fla. 194, 30 So. 795.

CONSTITUTIONAL LAW — TRIAL BY JURY — WHETHER APPELLATE COURT CAN REVERSE A JUDGMENT RENDERED ON A VERDICT. — The plaintiff sued the defendant company on an insurance policy. After the evidence was in, the defendant requested a verdict in its favor. The request was refused and the jury found in favor of the plaintiff. The defendant moved for judgment notwithstanding the verdict. The motion was refused, but on writ of error the Circuit Court of Appeals, finding that there was not sufficient evidence to send the plaintiff's case to the jury, entered judgment for the defendant. *Held*, that the Circuit Court of Appeals should have ordered a new trial, but the entering of judgment for the defendant was in violation of the Seventh Amendment, providing that "no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law." *Slocum* v. *New York Life Ins. Co.*, 33 Sup. Ct. 523. See NOTES, p. 738.

CORPORATIONS — CAPITAL, STOCK, AND DIVIDENDS — SITUS OF STOCK AT DOMICILE OF CORPORATION. — A testator who died domiciled in Alabama owned stock in a Mississippi corporation. By Mississippi law all the property in that state is distributed according to Mississippi law and not that of the

domicile of the deceased. By Mississippi law the stock was liable to the claims of creditors while by Alabama law it was exempt. *Held*, that Mississippi law applies. *Jane* v. *Martinez*, 61 So. 177 (Miss.).

For a discussion of the principles involved see 25 HARV. L. REV. 719.

COVENANTS OF TITLE — COVENANT OF WARRANTY — MEASURE OF WARRANTOR'S LIABILITY. — The vendor in a contract to sell land, at the request of the vendee, conveyed by warranty deed directly to the subvendee. The vendor's title proved defective. After the paramount owner had recovered against the subvendee, the subvendee sued the original vendor for breach of warranty. *Held*, that the damages are limited to the purchase price received from the original vendee. *Hunt* v. *Hay*, 49 N. Y. L. J. 263 (Sup. Ct., App. Div.).

The ancient real warranty, originating when land was not marketable, was substantially a promise to give other equally good land. See SEDGWICK, DAMAGES, 9 ed., § 952; CO. LIT. § 365. The consideration paid and recited was later treated as agreed liquidated damages to take the place of specific performance. See SEDGWICK, DAMAGES, 9 ed., § 951. New York has followed the analogy in dealing with modern covenants of quiet enjoyment. *Staats* v. *Ten Eyck*, 3 Caines (N. Y.) 111. Neither the rise in market value of the land nor improvements by the grantee before the breach are considered. *Pitcher* v. *Livingston*, 4 Johns. (N. Y.) 1. The argument in favor of the rule seems confined to the possibility of hardship on an innocent grantor in case of extraordinary appreciation, especially since the covenant runs with the land. See *Willson* v. *Willson*, 25 N. H. 229, 238. But if the grantor chooses to covenant, the grantee or subgrantee building in reliance thereon should not suffer. Moreover, to hold the consideration recited as conclusive of the price paid, as is sometimes done in cases of subgrantees, is contrary to fact. *Greenvault* v. *Davis*, 4 Hill, (N. Y.) 643; *Cook* v. *Curtis*, 68 Mich. 611, 36 N. W. 692. The usual theory of damages in chattel warranties is to require the warrantor to put the warrantee in the same position at the time of the breach as if the promise had been complied with. *Cary* v. *Gruman*, 4 Hill (N. Y.) 625. In the principal case the actual value of the land at the time of the eviction, of which the price paid by the subvendee may be considered *primâ facie* evidence, seems a more just assessment. *Bunny* v. *Hopkinson*, 27 Beav. 565; *Cecconi* v. *Rodden*, 147 Mass. 164, 16 N. E. 749; *Hardy* v. *Nelson*, 27 Me. 525. Under the New York rule the test seems to be the value of the land at the time of the original covenant. Even with this test, where, as in the principal case, the covenant is made directly to the subgrantee, the price paid by the latter at that time would seem to be a more logical measure of damages than that paid several months before by the original purchaser. *Cf. Graham* v. *Leslie*, 4 U. C. C. P. 176.

EVIDENCE — DECLARATIONS AGAINST INTEREST — WHETHER CONFESSION OF CRIME IS SUFFICIENT. — The defendant, on trial for murder, offered in evidence a confession of a third party, now dead, that he had committed the murder. *Held*, that the evidence is not admissible. *Donelly* v. *United States*, 228 U. S. 243, 33 Sup. Ct. 449.

Three justices dissent on the ground that the evidence was within the exception to the hearsay rule admitting a declaration against interest, although the interest was not of a pecuniary nature. *Coleman* v. *Frazier*, 4 Rich. L. (S. C.) 146; 2 WIGMORE, EVIDENCE, §§ 1476–77. The English cases do not consider penal interest sufficient. *Sussex Peerage*, 11 Cl. & F. 85. The American cases also support the majority opinion, though the courts generally have not considered the possibility of admitting the evidence as a declaration against interest. *State* v. *Fletcher*, 24 Or. 295, 33 Pac. 575; *State* v. *West*, 45 La. Ann. 928, 13 So. 173; *People* v. *Hall*, 94 Cal. 595, 30 Pac. 7. As is illustrated by the